

DETERMINATION

Case reference: ADA2577

Objector: A member of the public

Admission Authority: The Board of Directors for the Independent Jewish Day School

Date of decision: 10 June 2014

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of The Independent Jewish Day School for admissions in September 2014. I determine that they do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

The referral

1. The admission arrangements (the arrangements) of The Independent Jewish Day School (the school) for admission in September 2014 have been brought to the attention of the Office of the Schools Adjudicator (OSA) in correspondence from a member of the public on 27 January 2014. The school is a Jewish faith primary academy school in Hendon in the London Borough of Barnet, the local authority, (the LA). The referral questions the legitimacy of the second oversubscription criterion in the school's arrangements. This criterion relates to priority for admission for children attending the school's nursery.

Jurisdiction

2. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the board of directors, which is the admission authority for the school, on that basis.
3. The objection was received on 27 January 2014 which was too late to be considered under 88H of the School Standards and Framework Act (the Act) for admissions in September 2014. I am satisfied, however,

that it is within my jurisdiction to consider the arrangements under section 88I(5) of the Act and to consider whether or not they conform with the requirements of the School Admissions Code (the Code). In addition to the specific matter brought to my attention I have also used these powers under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the Code. The documents I have considered in reaching my decision include:
 - a) the email dated 27 January 2014 referring the arrangements;
 - b) a copy of the funding agreement between the academy trust and the Secretary of State;
 - c) the school's response to the referral and supporting documents;
 - d) communication with the Vaad Hakodesh (the Vaad) and supporting documents;
 - e) the composite prospectus produced by the LA for parents seeking admission to schools in the area in September 2014;
 - f) minutes of meetings held by the board of directors relating to admissions; and
 - g) a copy of the arrangements for admissions in September 2014.
5. I have also taken account of information received during two meetings which I convened and subsequent correspondence. The first meeting on 3 March 2014 took place at the school and was attended by the chair of governors, the acting headteacher and representatives from the LA and the Office of the Chief Rabbi (representing the faith body named in the funding agreement). The second meeting took place on 15 May 2014 at the Ner Yisrael Synagogue. The chair of governors, the now substantive headteacher, the LA and Office of Chief Rabbi representatives were joined by two representatives from the Vaad Hakodesh for this meeting.

Other Matters

6. At the meeting on 3 March 2014 I raised a number of matters concerning conformity with the Code as outlined below.
7. The acting headteacher and chair of governors explained that the "certificates of suitability" for admission to the school in terms of the Jewish faith are completed by an independent body, the Vaad Hakodesh, and that the school's representatives are not party to the process. Consequently the second meeting was convened at which the process was discussed.

Background

8. The Independent Jewish Day School Academy is an academy primary school for 3-11 year olds. The school was established about 35 years ago as a fee-paying independent school. It became a voluntary aided school in 1986 and an academy in 2011. The board of directors, which is also the governing body, is the admission authority for the school. The school was established to provide 'Secular and Religious Education to Orthodox Jewish families, within a framework where Religious Studies are taught in Hebrew'. In the academy funding agreement the faith body is identified as the United Hebrew Congregations of the British Commonwealth/United Synagogue.

Consideration of Factors

Priority admission to YR for children attending the nursery

9. The school has a published admission number (PAN) of 28 for admission to the Reception Year (YR). The arrangements for admission to the nursery are the same as those for admission to YR with the exception that attendance at the nursery appears in the YR arrangements. The school admits 28 children to the nursery. The school reports that following advice from the National Association of Jewish Orthodox Schools (NAJOS) regarding a shortage of places in the community it was agreed temporarily to accept 29 children into YR (not including children with a statement of special educational needs). In September 2013, 30 children were admitted to YR including one child with a statement of special educational needs, of these 28 had attended the nursery.
10. The oversubscription criteria for YR have Jewish looked after and previously looked after children as the first priority, Jewish children attending the nursery as priority two and siblings third. The fourth criterion is other children of the Jewish faith. Other criteria are recorded, but all children admitted to YR in the past three years have been within the first four criteria. The arrangements make provision for two lotteries to be held for the criterion in which the admission number is exceeded; one for the immediate catchment area of the school (60 per cent of places available allocated) and the second for those families living outside the immediate catchment area (40 per cent of available places allocated). The school maintains that this widens the area from which admissions are drawn and does not limit the "*pool of prospective parents to those who live on roads immediately abutting the school*". The school is in a relatively affluent area and the provision of two lottery areas is said to aim to provide a broader social mix of children.
11. The school has been oversubscribed for the last three years but reports that no lotteries have been held for admission to YR in the past three years although lotteries have been held for admission to the nursery.
12. As the Code neither prohibits giving priority nor gives permission for

nursery priority to be included as an oversubscription criterion I have tested the criterion against other relevant parts of the Code. I have considered the requirement in paragraph 14 of the Code which states; *“in drawing up their admission arrangements, admission authorities **must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated**”*. I have also considered paragraph 1.9(e) of the Code which states that admission arrangements *“**must not give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation including any religious authority**”* and paragraph 1.8 of the Code which states that *“**over-subscription criteria must be reasonable, clear, objective and procedurally fair...**”*

13. At the meeting in March the acting headteacher and chair of governors were keen to emphasise the unique nature of the school and the advantages that attendance at the nursery provides for the children. The nursery and reception classes are housed in an integrated early years section of the school and the school is proud of the progression and development of the children from the nursery to YR and view this as being the norm. They see real benefits in promoting this continuity for the children in social as well as educational terms. The school is not only an orthodox Jewish school but one in which lessons are taught in both Modern Hebrew and English. The most recent Ofsted report highlights the seamless integration of Jewish studies with the secular curriculum and the progression from nursery onwards with children becoming fluent, bilingual learners as particularly good features. As Modern Hebrew is introduced from the beginning of the nursery provision, linguistic development continues from nursery through key stages 1 and 2. The chair of governors and the acting headteacher report that *“the more secure the foundation in nursery, the better the children perform as they progress up the school.”*
14. Educational progression is important and clearly beneficial for children. I have, however, considered whether it is fair for children attending the nursery to be given priority over other children when it comes to admission to compulsory schooling in YR. In the past three years nearly all children admitted to YR have attended the nursery. (Five new admissions in 2011, four in 2012 and two to the additional two places in 2013). The school was oversubscribed for each intake year.
15. For children attending the nursery unit the funding for nursery places for 15 hours per week during term time (the 570 hours per year early years entitlement) for children from the term after their third birthday is allocated from the LA. The school states that *“the standard nursery day is a full day, to allow for the full Modern Hebrew and National curriculum syllabi to be taught”*. Although parents are asked to pay for the shortfall, in the form of fees, the school points out that *“no family is ever turned away and no child is ever sent home early, just because their parents cannot or will not pay”*.

16. Attending any nursery is not obligatory for pre-school age children. Some parents may choose other pre-school provision for their children. Parents may also prefer to look after their children at home or have other arrangements for child care based on family and/or work commitments. Parents do not have to send their child to school either full or part-time until the term in which the child is five years old. This is their legal right and admission arrangements for admission to compulsory schooling should not operate against them being able to make this choice at the appropriate time.
17. The PAN for YR is 28 and the number admitted to the nursery is also 28. The school knows the families well and reports that each year some families move away from the area when their children have completed nursery, thereby freeing places for YR. This is the case in 2014 for two children. As there is no guarantee that this will happen each year, and that the numbers in nursery are the same as the number admitted to reception, there is very little or no chance that children who do not attend the nursery will be successful in gaining a place in YR. My view is that the arrangements are unfair to those parents who are unable or who choose not to send their child to the nursery or who would like to but are not allocated a place (because the nursery is also oversubscribed) and this is in breach of paragraphs 14 and 1.8 of the Code because the criterion giving priority for attending the nursery is not reasonable or fair.
18. The school is adamant that it supports any family who is unable to pay for the full time nursery provision and cites a number of current examples. The provision of full-time nursery places with the expectation that a proportion is fee paying may amount to “financial support” to the school budget as stated in paragraph 1.9(e). I have considered the fairness of this criterion under paragraphs 14 and 1.8 and have concluded that it is unfair for other reasons as explained above, and I therefore conclude that paragraph 1.9(e) is not a determinant factor in this case.

Annual determination of admission arrangements

19. The minutes of directors’ meetings show that admission arrangements are discussed, but it is only by implication that arrangements appear to be formally determined. I accept the minutes of the discussions and the subsequent communication with the LA as evidence that the arrangements for September 2014 were determined, but would draw to the attention of the directors paragraph 15b of the Code which states that “*Admission authorities must set (determine) admission arrangements annually*”.

Consultation on changes of admission arrangements

20. In March 2012 the directors made the decision to remove the outer distance limit for the area B within the arrangements. They decided that this did not constitute a change and therefore did not undertake a consultation. I am of the view that this does constitute a change and

refer the directors to paragraph 15b which states that “*Where changes are proposed to admission arrangements, they must first publicly consult on those arrangements*”.

21. Consultation in line with the Code is required for changes in admission arrangements and this needs to be undertaken before 1 March in the determination year in line with paragraph 1.42 of the Code. Admission arrangements can only be revised after this date in the circumstances outlined in paragraph 3.6 of the Code. This means that for the arrangements for September 2015 revisions to the arrangements can only reflect mandatory requirements of the Code and the conclusions in this determination. Any other proposed changes will not be possible until the following year: a consultation process must take place before 1 March 2015, in accordance with paragraph 1.42 of the Code, in order to put changes into place for admissions in September 2016.

Certificate of Religious Practice

22. The funding agreement for the school states that the relevant faith body for the school is the United Hebrew Congregations of the British Commonwealth/United Synagogue. At the meeting on the 3 March the school explained that the faith body had delegated the oversight of the religious elements of the school’s work to the local Vaad Hakodesh. At the meeting the representative from the Office of the Chief Rabbi, representing the faith body, confirmed these arrangements.
23. As a school designated as a Jewish school the arrangements include references to children of the Jewish faith as permitted by the Code. At the meeting on 3 March the acting headteacher and chair of governors explained that the certificates of suitability for admission to the school in terms of the Jewish faith are completed by an independent body, the Vaad Hakodesh, and that the school’s representatives are not party to the process. They reported that the board of directors as the admission authority of the school are excluded from this process. I therefore convened a second meeting to clarify the roles of the Vaad and the board of directors.
24. The arrangements state that “*Applicants will require a certificate from the Vaad Hakodesh to accompany their application to the admission authority of the school.*” They go on to say a little about what the Vaad will be looking for. At the meeting on the 15 May the Vaad representatives reported that in their view this process is not part of the admission arrangements and the school reported that they do not use a Supplementary Information Form (SIF).
25. Paragraph 1.38 of the Code states that “*Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith –based oversubscription criteria, to the extent that the guidance complies with the mandatory provisions and guidelines of the Code. They **must** also consult with the body or person representing the religion or religious denomination*

when deciding how membership or practice of the faith is to be demonstrated.”

26. In conversation with the Vaad and from the documents sent in by them I am of the view that the questionnaire and interview process for prospective families do constitute part of the admission process and are therefore covered by the Code. I am concerned that the Vaad acts independently of the admission authority (the board of directors) as the chair of governors reports that the applications for the certificate of religious practice are not shared with the directors. The arrangements state, for example, that *“The Vaad Hakodesh will look for the children of applicants who will support and reinforce at home the Torah values*” but there is no explanation in the arrangements of how this will be assessed and currently these assessment criteria are not shared with the admission authority. A list of names of children who have achieved a certificate is given to the directors with no detail of how these children have ‘qualified’ for the certificate under the broad areas detailed in the arrangements.
27. A Vaad representative, citing paragraph 1.38 of the Code, said that in her view this allows the Vaad to act independently of the board of directors and the Code. I do not share that view. The admission authority for the school is the board of directors, and it is responsible for determining the admission arrangements, including any faith-based oversubscription criteria. The admission authority must have regard to any guidance from the Vaad, as the delegated body for the faith, on the elements of faith and practice which are required to be in place before a child can be assessed as being of the faith in accordance with the school’s published criteria. Any scoring scheme, if one is used, and the score required to satisfy the faith criteria must also be published. Parents must know how they can meet a faith oversubscription criterion. If the admission authority relies on the Vaad to rule on such matters, by issuing certificates of religious practice, then the board of directors must be satisfied that the methodology and the matters taken into account are compliant with the Code, and are published as part of the school’s admission arrangements.
28. Currently the admission authority is not involved at all in setting the faith criteria or the process by which applicants are assessed. This contravenes the Code and is unacceptable, and this needs to be addressed urgently.
29. The process of certification is not published as part of the admission arrangements and does not therefore conform to paragraph 14 of the Code which states that *“...admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”*.
30. The process of certification does not comply with paragraph 1.9a which

states that “... *arrangements must not place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements*”. It also does not comply with paragraph 1.9m which states the arrangements **must not** “*interview children or parents*”.

31. The process of certification includes the completion of a detailed questionnaire by prospective parents which is not included as part of the admission arrangements. It is my view that this constitutes a SIF and as such it does not comply with paragraph 2.4 of the Code i.e. the SIF must only request additional information when it has a direct bearing on decisions about oversubscription criteria. In this case, as details of the faith-based oversubscription criteria are not published, it is impossible for parents to know what is expected of them. In addition, it is a breach of paragraph 2.4e to ask for both parents to sign the form.
32. The faith oversubscription criteria must be published as part of the admission arrangements. The SIF requires significant modification in order to comply with the Code and the form, together with the assessment methodology, needs to be published as part of the admission arrangements. In addition, and in order to comply with paragraph 14 of the Code, the details of how marks, if used, are allocated, and whether marks are to be allocated to each section of the form, should be published together with the number of marks required in order to be issued with a certificate. Everything in the process of assessing whether an applicant meets a faith-based oversubscription criterion must comply with the Code.

Clarity of the Admission Arrangements

33. The admission arrangements for YR state at paragraph 2 that “*Applicants will require a certificate from the Vaad Hakodesh to accompany their application to the admission authority of the School*”. As an academy school the school can only apply specified criteria if the school is oversubscribed. If, in any year, there are more places than applicants then all the children, regardless of faith, must be admitted. The religious practice certificate is pertinent to the first four oversubscription criteria only and the arrangements must make it clear that this is when the certificate is relevant.
34. There is no mention in the YR arrangements of the lottery process or the need for all admissions to YR to be applied for through the normal routes of a child’s home local authority. Currently the arrangements only detail these practices for nursery admission. The arrangements need to be amended accordingly.
35. In the school’s “application” form for admission to reception, parents are asked to enclose a copy of the short form of the birth certificate. The Code is clear in paragraph 2.4 that any requested additional information must have a direct bearing on decisions about the oversubscription criteria. Paragraph 2.5 makes clear that it is only once a place has been offered the admission authority may request

proof of birth date. The birth certificate request is non-compliant with this and needs to be amended.

Admission of children with a statement of special educational needs

36. In conversation with the chair of governors and in the documentation provided by the school it is clear that children applying to the school who have a statement of special educational needs which specifies the school in the statement are admitted as a matter of course. I agree that this conforms to the Code, but the process is not recorded in the admission arrangements. This element of admission is not an oversubscription criterion and should appear in the main body of the arrangements to aid clarity for all parents.

Definition of looked after and previously looked after children

37. The definition of looked after and previously looked after children is not clear in the arrangements and requires amendment to conform to the Code. It need not make reference to sections of the Act, but should be explicit in its definition.

Conclusion

38. I consider that the oversubscription criteria may place undue pressure on parents to take up nursery places in order to ensure a place in reception for their child. Given that the Code is clear that admission authorities must not require parents to take up their school places until the term in which the child reaches compulsory school age, I consider the arrangements unfair in this respect.

39. Although I accept that continuity of education for children from 3 to 11 is desirable, and that stability and ordered progression in their learning may be a factor in their academic and social progress, I do not accept that the priority given to children attending the nursery complies with the Code. Giving priority for nursery attendees, who must attend full time, paying or seeking assistance with paying for time beyond the early years entitlement, advantages those children and it consequently disadvantages those children whose parents decide not to, or are not able to, use the school's nursery provision or would like to but are not allocated a place. For this reason I consider this to be unfair and contrary to paragraph 14 and paragraph 1.8 of the Code.

40. My conclusion therefore is that taking all these considerations together the admission arrangements which give priority for attending the nursery class are not compliant with the Code.

41. In addition there are key elements of the arrangements, particularly concerning the SIF and the faith-based oversubscription criteria and assessment of faith which do not conform with the Code as explained above. It is the responsibility of the admission authority (the board of directors) to ensure that admission arrangements comply with the Code.

Determination

42. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of The Independent Jewish Day School for admissions in September 2014. I determine that they do not conform with the requirements relating to admission arrangements.
43. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated: 10 June 2014

Signed:

Schools Adjudicator: Mrs Ann Talboys